

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. C 14-0780 SC
)	
UNITED STATES OF AMERICA)	ORDER DENYING MOTION FOR
)	CERTIFICATION OF ORDER FOR
Plaintiff,)	<u>INTERLOCUTORY APPEAL</u>
)	
v.)	
)	
\$209,815 IN UNITED STATES)	
CURRENCY,)	
)	
Defendant.)	
)	
_____)	
)	
JULIO FIGUEROA,)	
)	
Claimant.)	
)	
_____)	

I. INTRODUCTION

This is a fully-briefed motion¹ to certify one of the Court's orders, ECF No. 87 ("Order"), for interlocutory appeal under 28 U.S.C. Section 1292(b). Specifically, Figueroa, a civil forfeiture claimant seeking to recover cash seized during an encounter with the DEA at San Francisco International Airport, seeks leave to file an interlocutory appeal of the Court's order compelling supplemental answers to special interrogatories served by the

¹ ECF Nos. 89 ("Mot."); 92 ("Opp'n"); 93 ("Reply").

1 Government because "there are substantial grounds for difference of
2 opinion as to whether a civil forfeiture claimant must provide
3 responses to further special interrogatories about a defendant
4 property that was seized from him when the claimant has already
5 established standing" Mot. at 1-2. The motion is
6 appropriate for resolution without oral argument under Civil Local
7 Rule 7-1(b) and, for the reasons set forth below, the motion is
8 DENIED.

9
10 **II. BACKGROUND**

11 This is a civil forfeiture case relating to \$209,815 in United
12 States currency ("the Currency") seized from Figueroa's luggage
13 during a lawful and consensual encounter with DEA agents at San
14 Francisco International Airport. See See ECF No. 87 ("Prior
15 Order") at 2-7 (exhaustively summarizing the factual and procedural
16 history of this case).

17 After Figueroa filed his verified claim, pursuant to
18 Supplemental Rule G(6) of the Supplemental Rules for Admiralty or
19 Maritime Claims and Asset Forfeiture Actions ("Supplemental
20 Rules"), the Government served special interrogatories on Figueroa.
21 After Figueroa provided allegedly insufficient responses, the
22 Government filed a motion to compel, which Figueroa opposed,
23 arguing that because his answers were sufficient to establish his
24 standing to contest the forfeiture no further responses were
25 necessary. The Court agreed with the Government and, relying on
26 the Ninth Circuit's decision in United States v. \$133,420, 672 F.3d
27 629 (9th Cir. 2012), which rejected a substantially similar

28 ///

1 argument, granted the motion to compel. ECF No. 48 ("Mot. to
2 Compel Order") at 4-5.

3 After Figueroa supplemented his answers, the Government filed
4 several motions arguing, among other things, that Figueroa lacks
5 standing to contest the forfeiture and, because Figueroa's
6 responses to special interrogatories were insufficient, the Court
7 should strike his claim (a remedy authorized by Supplemental Rule
8 G(8)(c)(i)(A)). Once again, Figueroa opposed these motions,
9 arguing that because his answers to special interrogatories
10 establish his standing to contest the forfeiture, he need not
11 respond beyond that point. While the Court agreed with Figueroa
12 that he has standing, the Court once again rejected Figueroa's view
13 of the relationship between standing and special interrogatories.
14 Prior Order at 17-18, 25-26. As a result, the Court granted
15 Figueroa a final opportunity to supplement his answers to the
16 Government's special interrogatories by December 22, 2014.

17 Figueroa declined to supplement his answers, instead asking
18 the Court to certify its prior order for interlocutory appeal under
19 28 U.S.C. Section 1292(b) and stay the action pending the Ninth
20 Circuit's resolution of relationship between standing and special
21 interrogatories. The Government opposes this request.

22
23 **III. DISCUSSION**

24 Section 1292(b) permits a district court to certify an
25 otherwise non-appealable order for interlocutory review when the
26 court concludes "there is substantial ground for difference of
27 opinion and that an immediate appeal from the order may materially
28 advance the ultimate termination of the litigation"

1 "[T]his section [is] to be used only in exceptional situation in
2 which allowing an interlocutory appeal would avoid protracted and
3 expensive litigation." In re Cement Antitrust Litig., 673 F.2d
4 1020, 1026 (9th Cir. 1982). Because the Court finds the
5 requirements of "substantial ground for difference of opinion" and
6 potential for "materially advancing the ultimate termination of the
7 litigation" are not satisfied here, the Court will not certify its
8 prior order for interlocutory review.

9 The Court finds that Figueroa cannot satisfy the first prong
10 of Section 1292(b) because his argument is foreclosed by binding
11 precedent. See In re First Am. Corp. ERISA Litig., No. SACV 07-
12 01357-JVS (RNBx), 2008 WL 5666635, at *2 (C.D. Cal. Sept. 12, 2008)
13 ("[T]he fact that there is non-binding precedent in jurisdictions
14 other than the Ninth Circuit is insufficient to show a 'substantial
15 ground' for difference of opinion in light of the apposite and
16 controlling precedent" in the Ninth Circuit); see also APCC Servs.
17 v. ESH AT&T Corp., 297 F. Supp. 2d 101, 107 (D.D.C. 2003) ("A
18 substantial ground for difference of opinion is often established
19 by a dearth of precedent within the controlling jurisdiction and
20 conflicting decisions in other circuits.").

21 As the Court has repeatedly found, Figueroa's argument is
22 essentially the same as the argument the Ninth Circuit rejected in
23 United States v. \$133,420, 672 F.3d 629 (9th Cir. 2012). In
24 \$133,420, the claimant argued that "because a claimant can
25 establish standing merely by asserting an interest in the property,
26 and because the advisory committee's note to Supplemental Rule G(6)
27 limits the interrogatories to questions 'bearing on a claimant's
28 standing' it follows that Rule G(6) allows only questions regarding

1 the identity of the claimant and the type of legal interest
2 asserted." Id. at 642. The Ninth Circuit rejected that argument,
3 finding that the text and advisory committee notes for Supplemental
4 Rule G(6) contemplated interrogatories bearing on more than simply
5 the claimant's identity and type of property interest claimed. Id.
6 at 642-43. In so doing, the court found that interrogatories
7 probing, among other things, "the date(s), time, place and manner
8 in which the defendant currency[] was obtained, including the
9 names, address and telephone numbers of the person(s) from whom the
10 currency was obtained," and "the circumstances of each transaction
11 by which you acquired or obtained any interest in the defendant
12 currency," were "well within the scope of [Rule G(6)]." Id. at
13 636, 643 n.5; see also Mot. to Compel Order at 5-6.

14 Nonetheless, as Figueroa points out, this case is unlike
15 \$133,420 because the Court has already found that Figueroa has
16 standing to contest the forfeiture. See Prior Order at 17. In
17 Figueroa's view, this distinction is significant in light of a
18 recent Eighth Circuit case, United States v. \$154,853, 744 F.3d 559
19 (8th Cir. 2014), which found that if a claimant has standing to
20 contest the forfeiture, "then special interrogatories [are]
21 unnecessary to determine [the claimant's] standing as to that
22 currency. Thus the district court abused its discretion in
23 striking [the claimant's verified claim] . . . for failure to
24 adequately respond to the special interrogatories when no special
25 interrogatories were necessary to determine standing." 744 F.3d at
26 564.

27 But the Court does not believe the Ninth Circuit's logic in
28 \$133,420 can be reconciled with the Eighth Circuit's conclusion in

1 \$154,853. Concluding, as the Eighth Circuit did, that the
2 obligation to respond to special interrogatories ends as soon as
3 the claimant has responded sufficiently to demonstrate standing
4 would make responses to special interrogatories the Ninth Circuit
5 has specifically endorsed as "well within the scope of [Rule G(6)]"
6 optional. \$133,420, 672 F.3d at 642-43. In other words, if the
7 Court were to adopt Figueroa and the Eighth Circuit's view,
8 consistent with \$133,420, the Government could serve special
9 interrogatories "seek[ing] information beyond the claimant's
10 identity and type of property interest" claimed, however the
11 claimant would be under no obligation to answer those
12 interrogatories so long as the answers he did provide were
13 sufficient to confer standing at that stage of proceedings. Id.
14 As a result, even if the posture is different than \$133,420 the
15 theory is the same: because Figueroa has standing he need not
16 answer special interrogatories. The Ninth Circuit has rejected
17 that theory, and the existence of non-binding authority elsewhere
18 to the contrary does not create a substantial ground for difference
19 of opinion. See In re First Am. Corp., 2008 WL 5666635, at *2. As
20 a result, Figueroa cannot satisfy the first prong of Section
21 1292(b).

22 Furthermore, even if Figueroa could demonstrate substantial
23 grounds for difference of opinion, resolving this issue would not
24 materially advance the ultimate termination of the litigation.
25 Even if the Ninth Circuit were to grant interlocutory review and
26 determine that Figueroa is correct, and that he need not respond to
27 the Government's special interrogatories, there is no question that
28 the Government would be entitled to the same information in the

1 ordinary course of discovery. See Fed. R. Civ. P. 26(b)(1)
2 (describing the scope of discovery). Given that ordinary discovery
3 will be permitted as soon as the parties complete their Rule 26(f)
4 scheduling conference, currently set to take place on Friday,
5 February 20, 2015, the resolution of this issue is unlikely to
6 materially advance proceedings.

7
8 **IV. CONCLUSION**

9 Because Figueroa cannot show either substantial grounds for a
10 difference of opinion or that granting interlocutory appeal will
11 materially advance the litigation, his motion to certify the
12 Court's prior order for interlocutory appeal is DENIED. Instead,
13 the Court ORDERS Figueroa to serve the supplemental responses to
14 special interrogatories ordered previously, Prior Order at 26-27,
15 by Friday, February 13, 2015.

16
17 IT IS SO ORDERED

18
19 Dated: February 9, 2015



20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28